

tromission before his father's death ; so that he died not vassal to the king. It was answered, *Non relevat*, unless, in the defunct's time, the apprising had been declared extinct, or an order of redemption used ; for, albeit satisfaction of an apprising is receivable, by way of exception, amongst creditors, yet it is not competent against the king or his donatar, unless the apprising had been declared extinct in the defunct's life. The Lords found the defence relevant, that the apprising was extinct by satisfaction with intromission in the defunct's life, seeing thereby the former vassal's right revived, and needed no new infestment.

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1673. *January 8.*

STRILING *against* HAMILTON.

STIRLING of Bankel, having feued the third part of the lands of _____ to the Laird of Keir, who had set the two part of the said lands, in tack, to the Laird of Bardowie's predecessor, for several liferents and nineteen years ; and the lands being possessed by small divisions, some being roods, and the common pasturage being possessed promiscuously :—Bankel, with consent of Keir, the heritor, obtained a decret of the baron court, for altering the former division, and dividing the whole land in two entire tenements, wholly separate, one-third to Bankel, and two-thirds to Keir and Bardowie. Bardowie suspends upon this reason, That, he having a long tack, little inferior to heritage, and that the out-field and infield being divided, the division could not be altered without his consent ; and specially seeing his tack bore the lands as they were then possessed, which is according to the present division. It was answered, That a tack, of whatever endurance, was never found sufficient to hinder heritors to divide their lands as they pleased, especially if the tacksman had no detriment ; and the clause in the tack, “ as they were possessed,” is a common clause of course, expressing the quantity and extent of the lands set, but not the adjacency thereof, and is ordinary in all tacks ; so that, if that could hinder division, scarce any division would proceed ; and this being a common interest for the improvement of land, and for good neighbourhood, and being of advantage to both parties, the wilfulness of a tenant, without any reason, ought not to hinder the same. The Lords repelled the reason, and decerned the division to proceed, providing that either party had as much land in value, jointly, as what they now possess severally ; without limiting the same precisely to a two part and third part, in respect that, there being a division in small parcels before, the advantage that either party had by that division, or the improvement thereof, ought not, by this division, to be lost.

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1673. *January 14.* JAMES SYMONTOUN *against* THOMAS and JOHN BROCKS.

JAMES Symontoun pursues Thomas Brock his apprentice, and John Brock his cautioner upon the indenture, for payment of a merk for each day's absence out of his service. It was alleged for the defender, *1mo.* That the apprentice's